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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

12 SCOTT JOHNSON,
13 Plaintiff,
14 v.
15 CALA STEVENS CREEK/MONROE,
16 LLC, et al.,
17 Defendants.

Case No. 17-CV-04574-LHK

**ORDER REGARDING CROSS-
MOTIONS FOR SUMMARY
JUDGMENT**

Re: Dkt. Nos. 79, 89

18 In 2017, Plaintiff Scott Johnson (“Plaintiff”) brought this action concerning the availability
19 of accessible parking at Sunny Valley Spa (“the Spa”). Plaintiff sues the three owners of the
20 property in which the Spa is located: Cala Stevens Creek/Monroe, LLC; Cala Stevens
21 Creek/Monroe, LP; and Cala Holdings, LLC (collectively, “Defendants”). Plaintiff alleges that
22 the Spa failed to provide a van accessible parking space in violation of the Americans with
23 Disabilities Act of 1990 (“ADA”) and California’s Unruh Civil Rights Act (“Unruh Act”). Since
24 Plaintiff filed suit, however, the Spa closed, and the tenant space currently sits vacant. Now, on
25 the parties’ Cross-Motions for Summary Judgment, the Court dismisses Plaintiff’s ADA claim for
26 mootness and lack of jurisdiction; the Court therefore denies Plaintiff’s motion for summary
27 judgment as to that claim. However, the Court elects to retain jurisdiction over Plaintiff’s Unruh
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1 Act claim. The Court grants Plaintiff's motion for summary judgment as to the Unruh Act claim
2 and denies Defendant's motion for summary judgment as to the same.

3 **I. BACKGROUND**

4 Plaintiff Scott Johnson has quadriplegia, which means he cannot walk and uses a
5 wheelchair to move through the world. As a consequence, he drives a specially equipped van for
6 which he has been issued a Disabled Person Parking Placard by the California Department of
7 Motor Vehicles. ECF No. 89-4 ("Johnson Decl.") ¶ 3. According to Plaintiff, he visited Sunny
8 Valley Spa on at least five occasions: on June 19 2015; October 15, 2015; April 21, 2016; June 29,
9 2016; and July 12, 2016. *Id.* ¶ 4. During these visits, Plaintiff observed that although the property
10 had a parking space marked for use by persons with disabilities, it was not accessible to him. *Id.* ¶
11 6. Specifically, Plaintiff alleges: (1) the parking stall and the access aisle were not level because a
12 ramp from the curb extended far into the access aisle, (2) the space lacked "[t]he mandated pole or
13 wall mounted signage with the wheelchair logo," (3) the space lacked "[t]he required 'Minimum
14 Fine \$250' sign," and (4) the lot lacked "[t]he required tow-away signage."¹ ECF No. 89-1 ("Pl.
15 Mot. for Summ. Judgment") at 4-5. These problems, says Plaintiff, rendered the parking at the
16 Spa out of compliance with the applicable standards under the Americans with Disabilities Act of
17 1990, 42 U.S.C. §§ 12101 et seq. *Id.* at 10. Plaintiff claims he experienced "difficulty,
18 discomfort, and frustration" from having to park in a regular space and has been deterred from
19 visiting the Spa with greater frequency. Johnson Decl. ¶¶ 10, 13.

20 On August 10, 2017, Plaintiff brought this action in federal court against Cala Stevens
21 Creek/Monroe, LLC, the then-owner of the commercial property at 321 S. Monroe Street, San
22 Jose, California in which the Spa was located. ECF No. 1. Plaintiff subsequently amended his
23 complaint to name the two current owners—Cala Stevens Creek/Monroe, LP and Cala Holdings,
24 LLC—as defendants. ECF No. 31 ("SAC") ¶¶ 6-7. The Court refers to all three entities

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26 ¹ The Second Amended Complaint also alleged that "the parking space has been allowed to fade or
27 get paved over," *see* ECF No. 31 ¶ 16, but Plaintiff's Motion for Summary Judgment seemingly
abandons this allegation, *see* ECF No. 89-1 at 4-5.

1 collectively as “Defendants.” According to Defendants, Cala Stevens Creek/Monroe, LLC was
2 subsequently dissolved and is thus no longer an owner. ECF No. 79-4 (“Cala Decl.”) ¶ 1.
3 Defendants evidently did not own or operate the Spa, ECF No. 89-10 (“Def. Resp. to Request for
4 Admissions”) at 5, which was a tenant of the building per a written lease. Cala Decl. ¶ 2.

5 On December 5, 2017, Plaintiff filed the Second Amended Complaint (“SAC”). In it,
6 Plaintiff alleges violations of the ADA and seeks an injunction compelling the Spa to bring its
7 parking into compliance. Plaintiff also seeks monetary damages for his past experiences pursuant
8 to California’s Unruh Civil Rights Act, Cal. Civ. Code §§ 51 et seq. SAC at 9-10. Plaintiff
9 invokes this Court’s federal question jurisdiction over the ADA claim, *see* 28 U.S.C. §§ 1331,
10 1343, and supplemental jurisdiction over the Unruh Act claim, *see* 28 U.S.C. § 1367. SAC ¶¶ 9-
11 10.

12 Around March 31, 2018, however, the Spa permanently closed. *Id.* ¶ 4. Defendants
13 believe the reason for the closure was that “the business never obtained a final permit to operate.”
14 *Id.* ¶ 3. Thereafter, in August 2018, the parties stipulated that a joint inspection of the premises
15 was not necessary “in light of the business closure and proof thereof.” ECF No. 50 ¶ 4.
16 Defendants assert that the vacancy created by the Spa has not been filled. Cala. Decl. ¶ 2.

17 In any event, Defendants claim that before Plaintiff filed his initial complaint in August
18 2017, Defendants had already rectified the problems with the parking space. Defendants say they
19 engaged a Certified Accessibility Specialist in December 2016, who flagged the same conditions
20 Plaintiff did in his original August 10, 2017 Complaint as well as the December 5, 2017 SAC.
21 Cala Decl. ¶ 6; ECF No. 79-2 (“Atwal Decl.”) ¶ 3. Then, between December 2016 and February
22 2017, Defendants allegedly completed alterations that brought the space into compliance with the
23 standards cited by Plaintiff. Cala Decl. ¶ 7; Atwal Decl. ¶ 3.

24 Now before the Court are the parties’ respective Motions for Summary Judgment.
25 Defendants’ motion, filed on May 7, 2019, asks the Court to dismiss the ADA claim as moot and
26 then decline to exercise supplemental jurisdiction over the state law claim. ECF No. 79-1 (“Def.
27 Mot. for Summ. Judgment”) at 2, 7. On May 21, 2019, Plaintiff responded that the ADA claim is

1 not moot. Then, on June 27, 2019, Plaintiff filed his own Motion for Summary Judgment as to the
2 entire case. ECF No. 89. In opposition to Plaintiff's motion, Defendants simply reiterate the
3 jurisdictional arguments they made in their motion. *See* ECF No. 90.

4 **II. LEGAL STANDARD**

5 **A. Summary Judgment**

6 Summary judgment is appropriate if, viewing the evidence and drawing all reasonable
7 inferences in the light most favorable to the nonmoving party, there are no genuine issues of
8 material fact, and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a);
9 *Celotex Corp. v. Catrett*, 477 U.S. 317, 321 (1986). At the summary judgment stage, the Court
10 “does not assess credibility or weigh the evidence, but simply determines whether there is a
11 genuine factual issue for trial.” *House v. Bell*, 547 U.S. 518, 559-60 (2006). A fact is “material”
12 if it “might affect the outcome of the suit under the governing law,” and a dispute as to a material
13 fact is “genuine” if there is sufficient evidence for a reasonable trier of fact to decide in favor of
14 the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). “If the
15 evidence is merely colorable, or is not significantly probative, summary judgment may be
16 granted.” *Id.* (citations omitted).

17 The moving party bears the initial burden of identifying those portions of the pleadings,
18 discovery, and affidavits that demonstrate the absence of a genuine issue of material fact. *Celotex*,
19 477 U.S. at 323. Where the moving party will bear the burden of proof on an issue at trial, it must
20 “affirmatively demonstrate that no reasonable trier of fact could find other than for the moving
21 party.” *Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978, 984 (9th Cir. 2007). On the other hand,
22 for an issue for which the party opposing summary judgment will have the burden of proof at trial,
23 the movant need only point out “that there is an absence of evidence to support the nonmoving
24 party’s case.” *Celotex Corp.*, 477 U.S. at 325. If the moving party meets its initial burden, the
25 nonmoving party must set forth, by affidavit or as otherwise provided in Rule 56, “specific facts
26 showing that there is a genuine issue for trial.” *Anderson*, 477 U.S. at 250. The nonmoving party
27 “may not merely state that it will discredit the moving party’s evidence at trial,” in the hopes that

1 it can later develop evidence to support its claim. *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors*
2 *Ass'n*, 809 F.2d 626, 630 (9th Cir. 1987); *see also Matsushita Elec. Indus. Co. v. Zenith Radio*
3 *Corp.*, 475 U.S. 574, 586 (1986) (nonmoving party must present specific, significant probative
4 evidence, not simply “some metaphysical doubt”).

5 **B. Mootness**

6 Under Article III of the United States Constitution, the jurisdiction of federal courts is
7 limited to “actual and concrete disputes, the resolutions of which have direct consequences on the
8 parties involved.” *Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 71 (2013). “A corollary to
9 this case-or-controversy requirement is that an actual controversy must be extant at all stages of
10 review, not merely at the time the complaint is filed.” *Id.* (internal quotations omitted). Mootness
11 thus deprives a court of jurisdiction over an issue. See *Bland v. Fessler*, 88 F.3d 729, 732 n.4 (9th
12 Cir. 1996). If, due to some event that occurs during litigation, “the issues presented are no longer
13 live or the parties lack a legally cognizable interest in the outcome,” the case must be dismissed as
14 moot. *Tate v. Univ. Med. Ctr. of S. Nevada*, 606 F.3d 631, 634 (9th Cir. 2010) (citation omitted);
15 *see also Spencer v. Kemna*, 523 U.S. 1,18 (1998) (a case is moot when “there is nothing for [the
16 court] to remedy, even if [it] were disposed to do so”). Although ordinarily the party invoking a
17 court’s jurisdiction has the burden of establishing its existence, *Kokkonen v. Guardian Life Ins.
Co.*, 511 U.S. 375, 377 (1994), it is the party seeking to dismiss a case as moot that has the “heavy
18 burden of establishing that no effective relief remains for the court to provide.” *Chang v. United
19 States*, 327 F.3d 911, 918–19 (9th Cir. 2003); *see also GATX/Airlog Co. v. United States District
20 Court*, 192 F.3d 1304, 1306 (9th Cir. 1999).

22 **III. DISCUSSION**

23 Plaintiff brings two distinct causes of action: one for injunctive relief under the ADA and
24 one for monetary damages under the Unruh Act. The parties’ dispute regarding mootness
25 concerns only the first cause of action, so the Court begins its analysis there. The Court then turns
26 to the Unruh Act claim, which Defendants believe should also be dismissed for lack of jurisdiction
27 as a matter of this Court’s discretion and as to which Plaintiff seeks summary judgment on the

1 merits.

2 **A. The ADA Claim**

3 Title III of the ADA prohibits discrimination on the basis of disability in the “full and
4 equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations” of a
5 “place of public accommodation,” such as a spa. 42 U.S.C. §§ 2000a(b), 12182(a); *see Oliver v.*
6 *Ralphs Grocery Co.*, 654 F.3d 903, 904 (9th Cir. 2011). The statute specifies that discrimination
7 includes the “failure to remove architectural barriers . . . in existing facilities . . . where such
8 removal is readily achievable.” 42 U.S.C. § 12182(b)(2)(A)(iv). Relevant here, a lack of
9 accessible parking constitutes a barrier under the ADA. *See, e.g., Moeller v. Taco Bell Corp.*, 816
10 F. Supp. 2d 831, 853 (N.D. Cal. 2011).

11 Because “damages are not recoverable under Title III of the ADA,” *Wander v. Kaus*, 304
12 F.3d 856, 858 (9th Cir. 2002), Plaintiff seeks injunctive relief for Defendants’ alleged violations of
13 the ADA. Defendants give two reasons why Plaintiff’s claim for injunctive relief is moot: (1) the
14 Spa has permanently closed and the premises are currently unoccupied, and (2) “all alleged
15 barriers to access . . . have been remedied” such that the parking at the premises “now compl[ies]
16 with the applicable ADA requirements.” Def. Mot. for Summ. Judgment at 2. The Court
17 addresses each reason in turn.

18 It is well-established that in order to obtain injunctive relief under the ADA, a plaintiff
19 must “demonstrate a sufficient likelihood that he will again be wronged in a similar way. That is,
20 he must establish a real and immediate threat of repeated injury.” *Fortyune v. Am. Multi-Cinema,*
21 *Inc.*, 364 F.3d 1075, 1081 (9th Cir. 2010). This can either be done “by demonstrating deterrence,
22 or by demonstrating injury-in-fact coupled with an intent to return to a noncompliant facility.”
23 *Chapman v. Pier 1 Imports (U.S.) Inc.*, 631 F.3d 939, 950 (9th Cir. 2011) (en banc). If, however,
24 the public accommodation that Plaintiff seeks to patronize shutters its doors, the threat of future
25 injury dissipates. For that reason, the Ninth Circuit has said that “claims for prospective injunctive
26 relief” under the ADA become moot once the business has “ceased operation.” *Kohler v.*
27 *Southland Foods, Inc.*, 459 F. App’x 617, 618 (9th Cir. 2011) (affirming the district court’s grant

1 of summary judgment to defendants); *see also Disabled Rights Action Comm. v. Fremont St.
2 Experience LLC*, 44 F. App'x 100, 103 (9th Cir. 2002) (finding claim for an injunction “moot
3 given that the Race Rock has gone out of business for reasons unrelated to this litigation”);
4 *Pickern v. Holiday Quality Foods*, 293 F.3d 1133, 1135 n.1 (9th Cir. 2002) (noting with approval
5 that, because “the parties stipulated that the Anderson store has closed,” the district court had
6 dismissed plaintiff’s ADA claims as to that store as moot).

7 Here, the Spa at the center of Plaintiff’s suit closed in March 2018. As just explained, this
8 fact renders the request for an injunction moot and thus deprives the Court of subject matter
9 jurisdiction. In his opposition brief, Plaintiff protests that Defendants have not provided
10 “supporting evidence” “that the business is indeed closed.” ECF No. 80 (“Pl. Opp. to Def. Mot.
11 for Summ. Judgment”) at 2. But the parties stipulated to that fact, *see* ECF No. 50 ¶ 4, so Plaintiff
12 has no basis for now objecting. Plaintiff also suggests that the closure may not be permanent. Pl.
13 Opp. to Def. Mot. for Summ. Judgment at 2. Plaintiff has no evidence to support his supposition.
14 Meanwhile, the property has been vacant since the Spa closed over a year ago. Under these
15 circumstances, the possibility of the Spa reopening is too “remote and speculative,” *Doe v. Reed*,
16 697 F.3d 1235, 1239 (9th Cir. 2012), to save the case from mootness. *See Johnson v. Otter*, No.
17 18-CV-01689-BLF, 2019 WL 452040, at *3 (N.D. Cal. Feb. 5, 2019) (refusing to infer that the
18 defendant “will resume operations”). Accordingly, the Court must dismiss for lack of jurisdiction
19 Plaintiff’s claim for injunctive relief under the ADA.

20 Defendants argue the case is moot for the additional reason that renovations they made
21 between late 2016 and early 2017 have remedied all the issues identified by Plaintiff. It is true
22 that “a defendant’s voluntary removal of alleged barriers prior to trial can have the effect of
23 mooting a plaintiff’s ADA claim.” *Oliver*, 654 F.3d at 905; *see also Johnson v. Gallup & Whalen
24 Santa Maria*, No. 17-CV-01191-SI, 2018 WL 2183254, at *4 (N.D. Cal. May 11, 2018) (“There
25 can be no effective relief here, where defendants have already removed the architectural barriers
26 that plaintiff identified in the complaint.”). Importantly, though, this Court has previously said
27 that “[c]onclusory opinions that the ‘facility is free of non-compliant issues,’ or that particular

1 features, e.g., the accessible parking or point of sale, ‘comply with all applicable access
2 requirements,’” are “an insufficient basis on which to grant summary judgment.” *Kalani v.*
3 *Starbucks Corp.*, 81 F. Supp. 3d 876, 882–83 (N.D. Cal. 2015), *aff’d sub nom. Kalani v. Starbucks*
4 *Coffee Co.*, 698 F. App’x 883 (9th Cir. 2017). Such statements must “provide factual support” in
5 order to support a finding that the property has come into compliance with the applicable ADA
6 standards. *Id.* (offering the following example of a properly supported opinion: “the pick-up
7 counter . . . as modified now provides a length of 36 inches and a height of 34 inches, as such it
8 complies with access regulations.”). Here, the affidavits proffered by Defendants likely would not
9 suffice. *See generally* Atwal Decl., ECF No. 79-3 (“Layman Decl.”). Having found that the Spa’s
10 closure mooted Plaintiff’s ADA claim, however, the Court need not reach Defendants’ alternative
11 mootness argument.

12 **B. The Unruh Act Claim**

13 Plaintiff’s state law claim is a different story. “A violation of the ADA is, by statutory
14 definition, a violation of . . . the Unruh Act.” *Cullen v. Netflix, Inc.*, 880 F. Supp. 2d 1017, 1023
15 (N.D. Cal. 2012) (citing Cal. Civ. Code §§ 51(f), 54.1(d)). “Because the Unruh Act is coextensive
16 with the ADA and allows for monetary damages, litigants in federal court in California often pair
17 state Unruh Act claims with federal ADA claims.” *Molski v. M.J. Cable, Inc.*, 481 F.3d 724, 731
18 (9th Cir. 2007). Plaintiff has done just that. Plaintiff seeks an award of \$12,000, representing
19 \$4,000 in statutory damages for each of “two personal encounters with the barriers,” plus an
20 additional \$4,000 “for his subsequent deterrence.” Pl. Mot. for Summ. Judgment at 16. This
21 claim remains live despite the mootness of Plaintiff’s request for an injunction under the ADA
22 “[b]ecause a claim for damages under the Unruh Act looks to past harm,” *Arroyo v. Aldabashi*,
23 No. 16-CV-06181-JCS, 2018 WL 4961637, at *5 (N.D. Cal. Oct. 15, 2018). *See Johnson v.*
24 *Starbucks Corp.*, No. 16-CV-00724-DMR, 2018 WL 5099283, at *5 (N.D. Cal. Oct. 17, 2018)
25 (deciding the merits of the plaintiff’s Unruh Act claim after dismissing his ADA claim).

26 The Court’s jurisdiction over Plaintiff’s Unruh Act claim is nevertheless in dispute. The
27 claim is before this Court pursuant to the Court’s supplemental jurisdiction, *see* 28 U.S.C. §

1 1367(a), based on the claim’s close relation to Plaintiff’s federal cause of action under the ADA.
2 A district court “may decline to exercise supplemental jurisdiction” if, as here, it “has dismissed
3 all claims over which it has original jurisdiction.” *Id.* § 1367(c)(3). At the same time, the court
4 has discretion to keep the state law claims, taking into account considerations of “judicial
5 economy, convenience, fairness, and comity.” *Satey v. JPMorgan Chase & Co.*, 521 F.3d 1087,
6 1091 (9th Cir. 2008) (quoting *Carnegie–Mellon Univ. v. Cohill*, 484 U.S. 343, 351 (1988)).

7 Defendants correctly point out that “in the usual case in which all federal law claims are
8 eliminated before trial, the balance of factors . . . will point toward declining to exercise
9 jurisdiction over the remaining state law claims.” *Id.* (cleaned up). But this is not the usual case.
10 Because Plaintiff’s Unruh Act claim is predicated on a violation of the ADA, the Court will
11 primarily look to federal law to decide the issues in the case. The Court need not apply a novel or
12 complex body of state law, nor will the Court deprive California courts of any significant
13 opportunity to develop state law. Hence, comity does not counsel against retaining jurisdiction.
14 As for judicial economy, the case has been pending for over two years, several mediation sessions
15 have been held, and discovery has closed. The parties also raise no concerns about their
16 convenience or fairness. *See* Def. Mot. for Summ. Judgment at 9-10. Finally, the Court notes that
17 it has previously kept a plaintiff’s Unruh Act claim after dismissing his cause of action under the
18 ADA. *See, e.g., Johnson v. Starbucks Corp.*, 2018 WL 5099283, at *6; *Ramirez v. Fulton Mkt.*
19 *Place S.C., L.P.*, No. C 15-03793 WHA, 2016 WL 4492575, at *2 (N.D. Cal. Aug. 26, 2016). The
20 Court therefore exercises its discretion to retain Plaintiff’s California state law claim.

21 As to the merits, Plaintiff moves for summary judgment that Defendants violated the
22 Unruh Act claim by violating the ADA.² To prevail on a claim under Title III of the ADA, a

24 _____
25 ² The Court notes that “[t]here are several avenues by which a plaintiff can prevail on a disability
26 discrimination claim under . . . the Unruh Act,” one of which is to prove that a defendant
27 intentionally violated California accessibility requirements. *Rodriguez v. Barrita, Inc.*, 10 F.
28 Supp. 3d 1062, 1074 (N.D. Cal. 2014) (citing *Munson v. Del Taco*, 46 Cal. 4th 661, 672 (2009)).
However, Plaintiff pursues only one avenue. He argues that, because “defendant violated the
ADA,” “there has been a per-se [sic] violation of Unruh.” Pl. Mot. for Summ. Judgment at 13-14.
The Court therefore need not consider any potential alternative theories.

1 plaintiff must show (1) he is disabled within the meaning of the ADA; (2) the defendants are
2 private individuals or entities that own, lease, or operate a place of public accommodation; and (3)
3 he was denied public accommodations by the defendants because of his disability. *Molski*, 481
4 F.3d at 730. This last requirement “is met if there was a violation of applicable accessibility
5 standards.” *Moeller*, 816 F. Supp. 2d at 847.

6 Plaintiff easily meets his burden of fulfilling elements (1) and (2). As to the first, he has
7 submitted a declaration attesting to his disability, Johnson Decl. ¶ 2, which Defendants do not
8 contest. As to the second, Defendants have admitted that the Spa was a place of public
9 accommodation, ECF No. 34 (“Answer”) ¶ 23, and that Defendants own the property at 321 S.
10 Monroe Street, Def. Resp. to Request for Admissions at 5.

11 Turning to the third element, accessibility requirements can differ depending on when the
12 public accommodation was constructed or last altered. *See Moeller*, 816 F. Supp. 2d at 847-48.
13 Whereas places of public accommodation that were altered or constructed after 1993 must be
14 “readily accessible to and usable by individuals with disabilities,” 42 U.S.C. § 12183(a)(1),
15 architectural barriers in then-existing facilities need only be removed if doing so is “readily
16 achievable,” *id.* § 12182(b)(2)(A)(iv). *See Chapman*, 631 F.3d at 945. Moreover, although the
17 ADA Accessibility Guidelines (“ADAAG”) define what constitutes an architectural barrier in any
18 case, *id.*, the applicable standards may be those promulgated in 1991 or in 2010, *see* 28 C.F.R.
19 §§ 36.406(a), 36.304(d) (exempting certain facilities or elements from compliance with the 2010
20 standards). Here, neither party provided any evidence regarding when the property was
21 constructed or altered. Fortunately, Plaintiff has established that Defendants violated both the
22 1991 and 2010 ADAAG, even under the less stringent “readily achievable” standard. *See Johnson*
23 *v. Starbucks Corp.*, 2018 WL 5099283, at *3.

24 At the outset, Defendants have admitted that removal of the barriers alleged in the
25 complaint is “readily achievable.” Def. Resp. to Request for Admissions at 6. The question then
26 becomes whether the facility violated accessibility requirements during Plaintiff’s visits in 2015
27 and 2016. Under both the 1991 and 2010 Guidelines, any business that provides parking must
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1 provide spaces reserved for persons with disabilities, including at least one that is “van”
2 accessible. *See* 28 C.F.R. Pt. 36, App. D § 4.1.2(5)(b) (1991 ADAAG); 36 C.F.R. Pt. 1191, App.
3 B § 208.2.4 (2010 ADAAG). In particular, a van accessible space must include an adjacent access
4 aisle, and the two must be “level.” *See* 28 C.F.R. Pt. 36, App. D § 4.1.2(5)(b); 36 C.F.R. Pt. 1191,
5 App. D § 502.4. The 1991 Guidelines define “level” as not exceeding a slope of 1:50 (2%), 28
6 C.F.R. Pt. 36, App. D § 4.1.2(5)(b); the 2010 Guidelines define “level” as not exceeding a slope of
7 1:48, 36 C.F.R. Pt. 1191, App. D § 502.4.

8 In this case, the parking space at the Spa apparently had a curb ramp with a 6.5% gradient
9 extending into the access aisle. Plaintiff proffers his own affidavit stating that he personally
10 encountered this condition on several occasions, including on June 29 and July 12, 2016. *See also*
11 ECF No. 89-6 at 4-5. Plaintiff has also submitted an affidavit and photo evidence from an
12 investigator confirming that this condition existed on August 6, 2016, within two months of
13 Plaintiff’s last two visits. *See* ECF No. 89-7 (“Anderson Decl.”) ¶¶ 6-9; ECF No. 89-8. That
14 evidence—which Defendants have not rebutted—suffices to meet Plaintiff’s burden of showing
15 there is no genuine issue of fact that the access aisle had a 6.5% gradient during at least two of his
16 visits.

17 Plaintiff points to three other problems with the van accessible parking space at the Spa:
18 (1) there was no signage with the wheelchair logo, (2) there was no “Minimum Fine \$250” sign,
19 and (3) there was no tow-away signage. Although the same evidence discussed above supports a
20 finding that these deficiencies existed, Plaintiff has not established that they amount to a violation
21 of the ADA. Plaintiff identifies no provision of the ADAAG requiring any of the missing signage.
22 Instead, according to Plaintiff, the ADAAG incorporates the California Building Code—which he
23 claims requires the signage—as the standard for properly marking an accessible parking space
24 under the ADA. Pl. Mot. for Summ. Judgment at 10-11. Yet, the provision Plaintiff cites simply
25 does not substantiate that assertion. *See id.* (citing 36 C.F.R. Pt. 1191, App. D § 502.3.3). There
26 is therefore no basis for treating a violation of the California Building Code as a *per se* violation of
27 the ADA, and the Court declines to do so. Other courts have come to the same conclusion. *See*
28

1 *Johnson v. Lababedy*, No. 2:16-CV-0126 KJM AC, 2016 WL 4087061, at *5 (E.D. Cal. Aug. 2,
2 2016) (“[T]he CBC requirements are not mandatory, and failure to comply with them does not
3 amount to a violation of the ADA.”); *Eiden v. Home Depot USA, Inc.*, No. CIVS04-977
4 LKK/CMK, 2006 WL 1490418, at *8 (E.D. Cal. May 26, 2006) (“[T]he ADAAG . . . are the
5 exclusive standards by which to establish architectural barriers under Title III.”). Accordingly, the
6 Court rejects Plaintiff’s assertion that the missing signage constitutes an ADA violation.

7 Nevertheless, the excessive slope of the access aisle is enough to establish a violation of
8 the ADA and thus of the Unruh Act. Under the Unruh Act, a plaintiff is entitled to statutory
9 damages of \$4,000 for each occasion on which he is denied equal access or “deterring . . . from
10 attempting to enter a place of public accommodation.” *Botosan v. Paul McNally Realty*, 216 F.3d
11 827, 835 (9th Cir. 2000); *see* Cal. Civ. Code § 52. The Court is satisfied that, based on Plaintiff’s
12 several trips to the Spa and his actual knowledge of the violation from those trips, Plaintiff was
13 also deterred by the lack of a compliant parking space. Plaintiff has therefore adequately justified
14 his requested award of \$12,000 for two actual visits and one instance of deterrence.

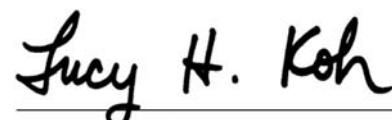
15 In sum, the Court GRANTS Plaintiff’s motion for summary judgment on the sole ground
16 that the access aisle was not level with the parking space, in violation of the 1991 and 2010
17 ADAAG.

18 **IV. CONCLUSION**

19 For the foregoing reasons, the Court DISMISSES the ADA claim for lack of jurisdiction
20 and DENIES Plaintiff’s motion for summary judgment as to the same. The Court DENIES
21 Defendants’ motion for summary judgment and GRANTS Plaintiff’s motion for summary
22 judgment as to the Unruh Civil Rights Act claim for \$12,000 in statutory damages.

23 **IT IS SO ORDERED.**

25 Dated: August 16, 2019



26 LUCY H. KOH
27 United States District Judge